

COURT NO.3

**Government Appeal No. 1105 of 2001
OLD No. 1704 of 1986**

State -----Appellant

Versus

Umendra Kumar Tandon -----Respondent

Hon'ble Irshad Hussain J.

This is the Government appeal against the judgment dated 6.3.1986 passed in the Criminal Appeal No. 57 of 1985 by the then Special Judge, Nainital.

2. Respondent, Umendra Kumar Tandon was charge-sheeted for offence punishable under Section 420, 467, 471 IPC and the Addl. CJM, Kashipur (Nainital) convicted and sentenced him for judgment and order dated 23.3.1985, he preferred an appeal which was decided by the learned Special Judge, Nainital and on appeal being allowed his conviction was set-

3. The prosecution case in brief was the year 1983 said accused was posted as Ledger Keeper-cum-Accounts Clerk in Mashipur Branch of Nainital Bank. One Ram Chandra deposited a bank draft in his account. Later on, he came to know that sum of Rs. 45,000 had illegally been withdrawn from his account No. 1199 (Saving Bank). He made complaint to the Bank Manager, Shri P.D. Belwal, who made inquiry and checked the account. It was revealed that the amount had been illegally transferred to the account of one S. P. Gupta and sum of Rs. 24, 900/- had been withdrawn from time to time from this account. A letter was sent to S. P. Gupta on the address given but it returned unserved and later on it was transpired that fictitious account was opened in the name of Shri S. P. Gupta to commit the said cheating and forgery. The matter was reported to the police and ultimately said accused was found liable for the said offences.

4. At the trial relevant evidence was produced and learned Magistrate accepted the evidence of the prosecution that the account in the name of S. P. Gupta was fictitiously opened on the basis of the forms being signed by introduced Mohan Lal (P.W.1) and his wife who were asked to sign by the accused and accordingly found the accused Umendra Kumar Tandon guilty of the charges and convicted and sentenced him. Aggrieved accused preferred an appeal which was allowed as stated above.

5. Heard learned AGA for the appellant and Shri S. K. Posti, learned counsel for the respondent and carefully perused the record.

6. At the outset, it needs to be mentioned that the Bank Manager complainant Shri P.D. Bedwal has preferred a criminal revision against the impugned judgment of acquittal and the same was dismissed on 20.2.1987 by the Hon'ble Allahabad High Court. The true copy of the order is being placed today on record by the learned counsel for the respondent accused.

7. Learned AGA drew attention to the evidence of the prosecution and submitted that learned Special Judge has drawn incorrect inference from the statement of PW1, Mohan Lal in the matter of opening of the fictitious account in the name of S. P. Gupta and that the learned judge failed to take into consideration the evidence that this witness Mohan Lal was made to sign the documents as introducer by the accused. Having gone through the evidence on record, I am not inclined to accept this submission of the learned AGA. The reason is that PW1, Mohan Lal was not alone introducer but his wife Smt. Radha Rani was also the another introducer and signed the required documents to facilitate opening of account in the name of S. P. Gupta. This witness was himself having an account with the Nainital Bank and he knew very well the procedure of introducing a person for opening of bank account and there was no occasion for him to be persuaded to become introducer by signing the card Exhibit-I,

8. In the face of the facts of the case said Mohan Lal was the most important witness of the case and his evidence in the above circumstances was rightly disbelieved by the learned Special Judge, there being no other corroborative evidence to support the allegation that accused was instrumental in getting the signature of the said introducer and his wife on the card except one. The learned Special Judge has no option but to disbelieve the said witness. Considering this, it appears to be no legal infirmity in appraisal of the evidence of the prosecution by the learned judge and, therefore, there are no cogent reasons to record a contrary finding about the guilt of the accused-respondent. There being no substance and merit in this appeal, the same is liable to be dismissed. Appeal is dismissed. The record be consigned.

(Irshad Hussain J.)

Dated 23.9.2003

Rawat